

Advisory Committee Meeting

February 3, 2006

MEETING MINUTES

On February 3, 2006, the Advisory Committee to the Bureau for Private Postsecondary and Vocational Education (BPPVE) held its first meeting of the year in the Sacramento Room (S-306) of the Department of Consumer Affairs, 1625 North Market Boulevard, Sacramento, California.

Members Present

Jay Achenbach, Institution Representative/Non-Degree
Mitchell Fuerst, Institution Representative/Non-Degree
Pastor Herrera, Jr., Student Advocate
Betty Sundberg, Educational Consultant
Salvador Velasquez, Employer Representative

Members Not Present

Dr. John Bear, Consumer Advocate
Elena Ackel, Student Advocate
Norma Ford, Institution Representative/Degree
Tom Gilmore, Institution Representative/Non-Degree
Dr. Lolly Horn, Institution Representative/Degree

DCA/BPPVE Staff Present

Barbara Ward, Bureau Chief
Patrick Dorais, Deputy Bureau Chief
Kristy Schieldge, DCA Legal Counsel
Jeanne Ireland, BPPVE Regulations Coordinator
Sarina Best, Administrative Analyst

Call to Order

Ms. Ward called the meeting to order at 10:20 a.m. Roll was called, but a quorum was not established because a majority of members were not in attendance.

Approval of Minutes for the Meeting of October 28, 2005

Ms. Ward indicated that the minutes for the meeting of October 28, 2005, could not be approved without a quorum. She asked if the members had reviewed the minutes and if corrections or revisions were required. There were no corrections suggested or recommended.

The members' attention was directed to a draft schedule of possible future meeting dates provided to them. Ms. Ward indicated that firm dates for upcoming 2006 meetings would be posted on the Bureau's Web site. She requested that members select their preferences for these meeting dates and provide that information to Ms. Ireland. The

final meeting schedule will reflect the dates chosen by a majority of members. Members agreed that meetings would continue to be held on Fridays. Ms. Ward said that alternating Advisory Committee meetings between Sacramento and Los Angeles was under consideration and that Mr. Velasquez had offered a meeting facility in Los Angeles for the next meeting. Mr. Herrera also stated his opinion that the final meeting of 2006 should be held in November rather than December.

Confirmation of, and Agenda Items for, Future Meetings

Ms. Ward indicated that the current agenda included one of three items suggested by the Advisory Committee. Other requested items would be on future agendas, as appropriate. A request to attend the current meeting by teleconference was received from a committee member; however, it was received too late to include in the public notice of the meeting agenda. The Bagley-Keene Open Meeting Act requires that the public receive notice of agenda items and meeting location (including the location of teleconference calls) at least 10 days prior to the scheduled meeting date.

Bureau Chief's Update

1. Follow-Up of December 5, 2005 Sunset Hearing

An internal workgroup, with the assistance of BPPVE's Operations and Administrative Monitor, Benjamin M. Frank, was in the process of developing a plan to revise the Private Postsecondary and Vocational Education Reform Act. The Bureau was directed to report back to Senator Figueroa in 90 days, following a Sunset Review hearing in December 2005.

Committee members had several questions, including whether the Bureau had addressed the recommendations in the Monitor's Initial Report, dated September 26, 2005, whether the Bureau's Strategic Plan would be affected and require modification, and whether outside assistance would be needed to respond to Senator Figueroa. Ms. Ward responded that the Monitor's recommendations were being discussed but that the Bureau had not submitted a formal response to the report. She confirmed the Strategic Plan would require modification and that the workgroup would be addressing the response to the Senator. Ms. Sundberg requested, and Ms. Ward agreed, that this issue would be an item on the next meeting agenda.

Ms. Ward said that the dates in the Bureau's Strategic Plan had been updated, as requested by Robert Johnson, Executive Director of the California Association of Private Postsecondary Schools (CAPPS), at the October 28, 2005, meeting. She interrupted her update and introduced Ben Frank, BPPVE's Operations and Administrative Monitor, who was available at that time to discuss his Initial Report and answer questions from the members.

Presentation of BPPVE Operations and Administrative Monitor's Report

Mr. Frank stated that he was willing to discuss the recommendations included in his report; however, he felt that because of the limited time available to him, his presentation would be better served by answering questions from the members. He stated that his Final Report to the Legislature would include some clarification, but would be substantially the same as the Initial Report. Mr. Herrera asked how the Advisory

Committee could assist and what areas most needed to be addressed. Mr. Frank responded that the statute had been tinkered with over several years and needed a major overhaul. The most important issue addressed by the report was the statutory structure of the Reform Act, which forced a systemic dysfunction of the private postsecondary regulatory program. There had been fundamental problems from the beginning and the band-aid fixes, despite good intentions, had not helped and instead resulted in more confusion. Specific issues are:

- The “305 Fund” is nearly depleted and the amount of fees being collected is going down;
- Current Bureau staff of 60.5 with 9 vacancies does not allow for the achievement of statutory requirements;
- The Student Tuition Recovery Fund’s (STRF) non-degree/vocational institution sub-account does not have enough funds to keep pace with student claims. Claims are paid only as STRF assessments come in from Non-Degree schools. Until the law is revised, the Bureau cannot meet its STRF obligations.

Mr. Achenbach asked if the Initial Report included recommendations to address the funding shortfall, or if anyone was working on recommendations to generate additional funds. Mr. Frank indicated that he was not aware of any such effort. Ms. Ward indicated that the question should be addressed at a future meeting.

Mr. Fuerst commented that it appeared that “good people were trying to implement a bad law”, and asked what role Mr. Frank would play in rewriting the law. Mr. Frank explained that although he is under contract to the Department of Consumer Affairs (DCA) until March 31, 2006, he has no responsibility in rewriting the law and expects to serve primarily as a resource to the Department. Ms. Ward commented that DCA is continuing to consider the Senator’s recommendation to retain the Monitor. Mr. Fuerst asked who would rewrite the law. Ms. Ward responded that possibly a committee would be formed and given the responsibility, but that the issue had not yet been determined.

At 10:55 a.m., Mr. Frank indicated that he had to leave. Ms. Ward thanked him for his time and for discussing the recommendations in his Initial Report with the Advisory Committee members.

Bureau Chief’s Update (cont’d)

The committee requested an update on the Bureau’s Strategic Plan. Copies of the updated plan were distributed for review and discussion. Ms. Ward reiterated that the Plan was updated and referenced the completed target dates, while noting some original target dates realistically could not be met.

Goal One: Strengthen Efforts to Protect Consumer and Student Rights: The Bureau has actively addressed the action items included in Objective 1.1, regarding implementation of an effective enforcement program. Items 1.1.1 through 1.1.3 are complete and remaining items are in progress. Ms. Ward explained that development of performance measures for certain aspects of the Bureau’s enforcement program are deferred until the new enforcement model is fully operational and the 6-month complaint

handling pilot program is complete. The information will be included as an agenda item as soon as it is available.

The committee requested information on Action Item 1.1.6, which addresses staff training. Ms. Ward responded that Bureau staff was surveyed to identify training needs. Enforcement training was requested and is currently ongoing. Training has been provided to date by the California Attorney General's Office, DCA Division of Investigation, U.S. Inspector General and Certified Fraud Investigators.

Action item 1.3.2, regarding submitting legislative proposals for revision, has been deferred and will be addressed following the report to Senator Figueroa in March 2006.

Mr. Herrera asked if the Bureau had developed a plan to enhance its Web site, in accordance with Objective 1.5. Ms. Ward confirmed that a group was assigned to work with Information Technology (IT) staff to identify needed revisions and incorporate improvements. She assured him that the Advisory Committee will receive regular updates on the group's progress. Mr. Herrera remarked that the public comments and discussion of the Web site at the Advisory Committee meeting held on October 28, 2005, had provided the Bureau with valuable information that should not be lost. Committee members agreed to provide their comments in writing to Ms. Ireland or to Mr. Dorais. Ms. Ward reiterated that the committee's input and assistance in identifying areas of concern were valuable and welcome.

Goal Three: Enhance stakeholder relationships. Considerable effort has been put into enhancing the Bureau's relationship with stakeholders. A new brochure was completed in accordance with Action item 3.3.4. Item 3.4.2 regarding the Bureau's Memorandums of Understanding (MOU) with other organizations and agencies was complete. All MOU's had been reviewed and revised to reflect current conditions. Item 3.2.2 of the Bureau's Strategic Plan, which addressed open forum meetings with institutions in northern and southern California, has been deferred until Fiscal Year 2006/2007 due to budgetary constraints.

Ms. Sundberg asked if the information in the MOUs was available to the public and if copies were available to committee members. Ms. Schieldge advised her that she would have to check in regard to any confidential information, but that Ms. Sundberg could certainly request copies through the Public Records Act (PRA) request process.

Mr. Fuerst asked if Item 3.1.1, which addresses information sharing with accrediting agencies, was being implemented. Ms. Ward explained that the Bureau's Education Specialists accompanied representatives of the accrediting agencies on some site visits, although resource constraints do not allow regular participation. She said that nonetheless it is the Bureau's goal to partner with the accreditors. Ms. Sundberg wanted to know if information related to enforcement actions taken against an institution is shared with accrediting agencies. Ms. Ward confirmed that it is and that exchange of such information is included in most, if not all, of the MOUs. Ms. Schieldge explained that statutory authority is required before agencies share consumer information.

Mr. Herrera asked if reports other than the response to Senator Figueroa following the December, 2005, Sunset Hearing were required by the Legislature, and was informed that the Bureau provided a statutorily mandated report for each fiscal year. He asked if the annual reports were posted on the Bureau's Web site. He stated that such reports

should be posted and that the Advisory Committee definitely would want copies. Ms. Schieldge informed him that the Legislature might also publish the Bureau's Annual Report.

Ms. Ward stated that, because of other operational priorities, the recent reorganization, and a lack of required staffing resources, the Bureau had not been able to address Goal Two: Improve the Bureau's institutional approval process.

2. Application Backlog Reduction

Ms. Ward reported that significant progress has been made on reduction of the Bureau's backlogs.

The Non-Degree Program's backlog for new institution approvals has been eliminated. As of the date of this meeting, 73 of 76 applications for approval of new institutions received by the program are being processed within the 30-day timeframe allowed by Statute and regulation. Pending institutional re-approvals are down from 233 to 84. Only 11 program change requests still require processing of the 132 requests previously pending. The Non-Degree institutions, as well as CAPPs, have recognized the progress.

The Degree program has completed 16 of the 68 pending site visits, as documented in May 2005. The program has been impacted by staff turnover and the Bureau's focus has been on staffing in other areas. However, current program staff is dedicated to reducing or eliminating the backlog.

Mr. Velasquez asked if site visits could be contracted out by State agencies. Ms. Ward explained that, although allowed by statute, the requesting agency was required to prove that funds were available to pay the contract, and that quality could be assured. Mr. Fuerst stated that in the case of site reviews performed by accrediting agencies, one person on the site visit team was an institutional peer, who participated at no cost.

A public member suggested that the private, postsecondary education community could be required to monitor itself. He indicated that a 3rd party reviewer could perform the site visits, thereby considerably reducing the Bureau's costs. Ms. Ward explained that statute requires the Bureau to perform site visits.

3. Regulatory Packages

Ms. Ward updated the committee members on the status of the Bureau's regulatory packages. She stated that the Registered Educational Services and Programs package had been filed with the Office of Administrative Law, and that a public hearing was scheduled for March 6, 2006, in the DCA Hearing Room. No particular opposition had been received to date.

Although considerable preparation was put into development of a Complaint Handling Procedures regulation package, filing was nonetheless delayed, primarily to allow for evaluation of the complaint mediation pilot and complaint handling procedures of the pilot program, so that changes could be made as necessary based on the program's success. A determination was recently made to include the results in the pending regulatory package, as the program has proven very successful.

4. Staffing/Budget

Mr. Herrera asked if funds were provided at the beginning of the fiscal year, and if so, why the Bureau could not plan for staffing needs. Ms. Ward explained that the bureau is self-funded and the budget is based on the revenue generated from fees assessed on regulated industries. He asked if the budget fluctuated with receipt of fees and was told that the budget was established and did not fluctuate but could be used up by enforcement costs. Ms. Ward confirmed that the Attorney General charged for its work on enforcement issues and that the charges could affect the Bureau's overall budget. No budgetary increases are available and revenues are down.

There were no questions or comments from the public.

Lunch Break

The meeting broke for lunch at 11:30 a.m. Ms. Ward reconvened the meeting at 1:20 p.m.

Overview of Postsecondary Legislation

Laura Zuniga, Assistant Deputy Director of DCA's Legislative & Regulatory Review Division, discussed bills currently before the Legislature that will have an effect on postsecondary education if passed into law. She provided a handout summarizing the following information:

- AB 523, Figueroa, is intended to correct technical drafting errors made in SB 1544, which went into effect on January 1, 2005, and which affected the definitions of the categories of registered programs. Ms. Zuniga indicated that AB 523 could be expected to include stronger language.
- AB 827, Goldberg, would require private, postsecondary educational institutions to comply with specified federal requirements relating to notices required to be included in consumer credit contracts.
- SB 924, Speier, would increase the requirements of private postsecondary institutions that offer education and training leading to Class "A" truck driver licenses.

Ms. Ward told the committee members that a legislative update would be a standing agenda item for future meetings.

Enforcement Update

Jesus Jaime, Education Administrator of the Bureau's Enforcement Program, provided an update to the committee members on previously reported activities.

Training of Enforcement Program staff is ongoing. Recently, staff attended training conducted by Certified Fraud Examiners and the Office of the Attorney General. Upcoming training on the administration and requirements of Title IV federal financial aid

is being arranged through of the U.S. Department of Education's Office of Postsecondary Education.

Ten outreach programs were implemented at high schools by Enforcement Program staff as part of the Bureau's effort to educate potential students on things to consider when selecting a private, postsecondary school, including programs appropriate for them, and to increase awareness of protections that are available to them should they ever experience a problem with a school in which they are enrolled.

He also provided a broad overview of the Bureau's newly restructured Enforcement Program. Staff is divided into units that concentrate on three essential areas:

- Unapproved/Unregistered Activity
- Program Compliance
- Financial Review

Mr. Jaime explained that administrative actions taken by the Enforcement Program against schools are mainly a result of serious violations through allegations made by consumers, failure to pay required fees, quality of education, or an unapproved change of ownership. He explained the Bureau's citation process, and provided general statistics on administrative actions taken by the Bureau. In 2003, the Bureau had taken 10 administrative actions against schools, and 21 were taken in 2004. Enforcement in 2005 resulted in 13 administrative actions, 7 school closures and 5 hearings. In 2006, three administrative actions had been initiated as of the date of the meeting.

Enforcement staff is reviewing the processes involved in approving Certificates of Authorization (COA) to school directors, instructors and financial aid administrators. Recommendations for denial of COA applications had resulted in 178 denials since 2004.

Mr. Achenbach asked what types of schools were mainly involved in the Bureau's administrative actions. Mr. Jaime replied that some general examples were beauty and cosmetology schools, and institutions offering courses in hypnosis.

He updated the committee on the complaint mediation pilot program, and provided the following statistical information. Since the pilot began in September 2005:

- 423 student complaints received
- 170 complaints resolved (including refunds) & closed 40%
- 161 complaints referred to the enforcement program 38%
- 92 complaints are pending 22%

Mr. Fuerst asked if the pilot program was continuing. Mr. Jaime said that the pilot was originally scheduled to run for 6 months, from September 2005 through March 2006, and it might be extended permanently following evaluation of its success.

Enhancement of the Bureau's information technology system and access to information from other agencies are expected to allow the Bureau to reduce the costs associated with the Attorney General's office by enforcing its own actions.

Mr. Jaime indicated that procedures were in the final stage prior to implementation in regard to payment of annual and Student Tuition Recovery Fund (STRF) assessments. Enforcement's Financial Review and Audits Unit would pursue collection of delinquent fees with due diligence. Mr. Dorais emphasized that collection of fees was a priority.

Mr. Fuerst asked about the problem with STRF funds identified in the Monitor's Initial Report. Mr. Dorais responded that the Bureau had developed a repayment plan between the non-degree institution and degree institution sub-accounts. STRF staff is also only paying claims from non-degree closures as STRF assessments are collected and deposited in the non-degree sub-account.

Ms. Ward indicated that the Bureau hoped to share proposals specific to the STRF issues at the next Advisory Committee meeting.

Selection of Advisory Committee Chair and Vice-Chair

Ms. Ward indicated that it was not possible to elect a Chair or Vice-Chair due to a lack of a quorum. She requested the committee members help in recruiting three new members: an employer representative and two student advocates. She went on to tell the members that the next meeting in May would possibly be held in Los Angeles.

Ms. Ward directed the Advisory Committee's attention to the Member Orientation and Reference Manual included in their meeting packets. She said that her predecessor first developed the manual and that she had revised and updated it. The values identified in the first two pages were taken from DCA's and the Bureau's Strategic Plans. The Advisory Committee history and legislative authorization were taken from the Reform Act, as were the Committee's purpose and responsibilities. She explained that, per legislative intent, the Committee's input was advisory only, but most welcome and a valuable resource to the Bureau. The Committee would be asked to provide input mainly on the Administration, Licensing and Enforcement functions of the Bureau.

Advisory Committee member appointments are for two years, and a member can be re-appointed and serve a total of four years. Chair and Vice-Chair appointments are one year. Members can be removed from the Committee by the Director of DCA, mainly for actions that are determined to be counter-productive to the orderly conduct of the business of the committee.

DCA requires training of its committee members. DCA is currently developing a training course and members will receive advance notice of the time frame of the training.

The Bureau also reimburses travel-related expenses incurred by members in attending the meetings.

The Advisory Committee meetings are held in compliance with the Bagley-Keene Open Meeting Act. In regard to meeting attendance by teleconference, members were informed that advance notice would be required because the teleconference must be included in the public notice of the meeting. Further, the location of the incoming teleconference was required to be in a location open to the public. She directed the members to the last page of the Manual, which detailed the requirements of teleconferencing included in the Open Meeting Act.

Public Comment

Ms. Ward asked for comments from the public. There were no public comments.

The meeting was adjourned at 1:42 p.m.